

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EDNA HUFF)	
Claimant)	
)	
VS.)	Docket No. 251,823
)	
PRIME, INC.)	
Self-Insured Respondent)	

ORDER

The self-insured respondent appealed Administrative Law Judge Bruce E. Moore's Award dated October 10, 2001. The Board heard oral argument on April 2, 2002.

APPEARANCES

Jan Fisher of Topeka, Kansas, appeared for the claimant. Dustin Denning of Salina, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUE

Whether the parties are subject to the Kansas Workers Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The facts are well known to the parties and will be recited only as necessary to explain the Board's decision. Claimant, a Kentucky resident and a truck driver, entered into an employment contract with a Missouri respondent within the state of Missouri. That contract contained a choice of law provision specifically designating the law of Missouri as

controlling any workers compensation claim. Claimant was injured in an accident in Kansas and filed a claim for compensation under the Kansas Workers Compensation Act (Act), K.S.A. 44-501, *et seq.* Despite the terms of the employment contract, the Administrative Law Judge (ALJ) determined the parties were subject to the provisions of the Act. Respondent requested Board review and the sole issue on appeal is whether the ALJ erred in this regard.

The ALJ determined that jurisdiction existed based on 9 *Larson's Workers' Compensation Law* § 143.07 and the United States Supreme Court's decision in *Pacific Employers Ins. Co. v. Industrial Accident Commission*, 306 U.S. 493, 83 L.Ed. 940, 59 S.Ct. 629 (1939). The Board affirms the ALJ's decision and incorporates all findings of fact and conclusions of law contained in the decision, except to the extent the decision is inconsistent with the following legal principles.

The issue presented involves the interpretation of K.S.A. 44-505(a). Therefore, the Board begins by setting forth several general and applicable rules of statutory construction.

The fundamental rule of statutory construction is that the intent of the legislature governs when we can ascertain that intent. *In re Marriage of Killman*, 264 Kan. 33, 42, 955 P.2d 1228 (1998). We must give effect, if possible, to the entire act and every part thereof. To this end, it is the Board's duty, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible. *State v. Engles*, 270 Kan. 530, Syl. ¶ 3, 17 P.3d 355 (2001). In order to determine legislative intent, the Board may employ the maxim *expressio unius est exclusio alterius*, *i.e.*, the inclusion of one thing implies the exclusion of another, unless it overrides or defeats a clearly contrary legislative intention. *State v. Luginbill*, 223 Kan. 15, 20, 574 P.2d 140 (1977). Under this rule, when legislative intent is in question, we can presume that when the legislature expressly includes specific terms, it intends to exclude any items not expressly included in the specific list. *State v. Wood*, 231 Kan. 699, 701, 647 P.2d 1327 (1982). Lastly, the provisions of the Act are to be liberally construed for the purpose of bringing employers and employees within its provisions to provide protection of the Act to both. *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P. 2d 258 (1999).

With these rules firmly in mind, we turn to the question posed. K.S.A. 44-505 provides that the Act "shall apply to all employments wherein employers employ employees within this state . . ." The statute's language is broad, but the legislature carved out specific exceptions to the general rule of coverage under the Act in subparagraphs (a)(1) through (a)(5). The legislature did not include an exception to coverage for the circumstances present in the instant case. Therefore, under the rules set forth above, the Board concludes that the legislature did not intend to allow parties, by a contractual choice of law provision, to opt out of coverage under the Act when the work-related injury occurs within this state. The question then becomes whether this statutory construction overrides a clearly contrary legislative intention.

The ALJ noted that a contractual choice of law provision could arguably preclude jurisdiction by a Kansas court for an in-state accident “[s]ince the terms of K.S.A. 44-505 are expressly subject to” K.S.A. 44-506. While the Board is mindful that K.S.A. 44-505 is subject to K.S.A. 44-506 under certain circumstances, the Board disagrees with the ALJ’s conclusion. K.S.A. 44-506 provides:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

None of the factual circumstances designated in the statute exist in this case. Therefore, K.S.A. 44-506 is not applicable.

K.S.A. 44-506's statutory language nevertheless has bearing on the Board’s ultimate finding in claimant’s favor since it supports the Board’s finding regarding legislative intent. K.S.A. 44-506 provides that injuries sustained outside the state are compensable if the parties entered a contract of employment within the State of Kansas, “unless such contract otherwise specifically provides.” When drafting the statute involving out-of-state injuries and employment contracts created in Kansas, the Kansas Legislature included a statutory provision allowing the parties to designate their choice of law in the employment contract. As set forth above, the legislature did not include this option when drafting K.S.A. 44-505. The Board finds that the legislature would have included this option in K.S.A. 44-505(a)(1) through (a)(5) if it intended to allow this exception from coverage when a person is injured in this state. It did not.

According to Professor Larson:

Express agreement between employer and employee that the statute of a named state shall apply is ineffective either to enlarge the applicability of that state's statute or to diminish the applicability of the statutes of other states. Whatever the rule may be as to questions involving commercial paper, interest, usury and the like, the rule in workers' compensation is dictated by the overriding consideration that compensation is not a private matter to be arranged between two parties; the public has a profound interest in the matter which cannot be altered by any individual agreements. This is most obvious when such an agreement purports to destroy

jurisdiction where it otherwise exists; practically every statute has emphatic prohibitions against cutting down rights or benefits by contract. The only exception occurs under several statutes which explicitly permit the parties to agree that the local statute shall not apply to out-of-state injuries.¹

Thus, the Board's application of the maxim *expressio unius est exclusio alterius* in the present case does not override or defeat a clearly contrary legislative intention. As a result, the Board finds that K.S.A. 44-505 does not allow parties to opt out of coverage under the Act by including choice of law provisions in employment contracts when injuries arise out of and in the course of employment within this state.

The Board, based on the foregoing analysis, finds the parties are subject to the provisions of the Act. The ALJ's Award is affirmed in all other respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated October 10, 2001, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan Fisher, Attorney for Claimant
Dustin Denning, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation

¹ 9 *Larson's Workers' Compensation Law* § 143.07.